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# In the Supreme Court
## of the
## United States

October Term, 1955

No. 616

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MARY BUDOSS,

*Petitioner,*

vs.

HONORABLE VERNON D. FORBES, District Judge of the Territory (now State) of Alaska, Fourth Division, and JOHN B. HALE, Clerk of the Fourth Judicial District of said District Court,

*Respondents,*

and vs.

ALASKA HOUSING AUTHORITY, a public corporate authority,

*Intervenor.*

---

# REPLY TO PETITION FOR A WRIT OF CERTIORARI
## to the United States Court of Appeals
## for the Ninth Circuit.

JOHN R. CONNELLY,
P. O. Box 1912, Fairbanks, Alaska,
*Attorney for Intervenor*

CLIFFORD J. GROH,
HENRY J. CAMAROT,
P. O. Box 1912, Fairbanks, Alaska,
*Of Counsel.*

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**REPLY TO PETITION FOR A WRIT OF CERTIORARI**
**to the United States Court of Appeals**
**for the Ninth Circuit.**

## INTRODUCTION.

The Alaska Housing Authority, identified as "Intervenor" in the caption, respectfully submits this reply brief in opposition to the Petition of Mary Bridges for a Writ of Certiorari.

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## JURISDICTION.

Petitioner states on page 11 of her petition that federal jurisdiction is invoked "upon the fact that the proceedings in the court of first instance were begun prior to the admission of Alaska into the Union." No statutory reference is alluded to by petitioner. In the complaint filed by the intervenor, nothing was included therein to suggest that federal jurisdiction was being invoked and it is apparent that the trial court was acting in the capacity of a state court in entertaining the proceedings set forth in the complaint. (In the interim, since the United States Court of Appeals opinion of August 18, 1959, the petitioner has also appealed to the Supreme Court of the State of Alaska and on December 23, 1959 was rendered a favorable decision on which intervenor is now requesting a rehearing. (See Intervenor's Appendix A.) The affirmative assertion of jurisdiction in the Supreme Court is vital, and it is intervenor's position that petitioner's allegation of federal jurisdiction is insufficient and does not vest this court with the necessary jurisdiction to entertain the petition. However, assuming this Court will take jurisdiction to determine

jurisdiction, the intervenor submits this brief in opposition to the petition.

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## QUESTION PRESENTED.

It is urged that the sole question presented to this Court is whether or not the United States Court of Appeals for the Ninth Circuit under applicable statutes has jurisdiction to entertain appealable decisions and judgments rendered by the District Court for the Territory of Alaska during the period following the formal granting of Statehood on January 3, 1959.

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## ARGUMENT.

### I.

### THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DOES NOT HAVE JURISDICTION TO ENTERTAIN APPEALS FROM THE DISTRICT COURT OF ALASKA.

As the intervenor understands petitioner's argument, the blending of Section 17 of Article XV of the Alaska Constitution and the Statehood Act (P.L. 85-508, 72 Stat. 339, See Pet. Br., Appendix C), creates the necessary jurisdiction in the United States Court of Appeals for the Ninth Circuit to entertain the interlocutory appeal from the District Court of Alaska. This blending is presumably found by examining the Constitution and the Admission Act and discovering therein the intent of Congress and the State's Constitutional Convention held in 1955, at which time the Constitution for the State of Alaska was drafted.

Section 17 of Article XV of the State Constitution reads as follows:

> Section 17. Transfer of Court Jurisdiction. Until the courts provided for in Article IV are organized, the courts, their jurisdiction, and the judicial system shall remain as constituted on the date of admission unless otherwise provided by law. When the state courts are organized, new actions shall be commenced and filed therein, and all causes, other than those under the jurisdiction of the United States, pending in the courts existing on the date of admission, shall be transferred to the proper state court as though commenced, filed, or lodged in those courts in the first instance, except as otherwise provided by law.

The "judicial system" of Alaska as used in Section 17, quoted above, is nowhere defined and there is no indication that the delegates at the convention had anything more in mind than to retain a "judicial system," consisting of (1) the District Court of Alaska, (2) the Commissioner's Courts (Ex-Officio Justice of the Peace) and (3) the Municipal Courts. It is hard to imagine the delegates at the convention being of the opinion that they could incorporate the United States Court of Appeals for the Ninth Circuit—a federal court—as part of a state "judicial system", even during an interim transitional period.

Indeed, whether or not the drafters of the State Constitution had any part of the federal judiciary in mind, as contended by the petitioner, is purely speculative. (See Pet. Br., pp. 12 and 13.) In the years just prior to Statehood there had been considerable

agitation by the citizens of Alaska for a territorial judicial system such as had existed in the Territory of Hawaii for several decades. The reference in Section 17 cannot be identified with any particular court system, and this is particularly true if viewed, not in hindsight, but in 1955, when the Constitution was drafted.

Petitioner appears to suggest that an "offer" was made by the enactment of Article XV, Section 17 of the State Constitution and that there has been an "acceptance" of this offer manifested by liberally reading certain portions of the Statehood Bill. In other words, in 1955 the Territory of Alaska's delegates to the constitutional convention put some sort of continuing offer in the State Constitution and, supposedly, in 1958 the federal government accepted this offer and the result was an alleged agreement by "reciprocal actions" between the state and the federal governments.

Having presumably established the premise that through "reciprocal action" a judicial system was established which included the United States Court of Appeals for the Ninth Circuit, petitioner finds herself confronted with Section 18 of the Statehood Bill. Section 18 declares that the proposed discontinuance of the *District Court for the Territory of Alaska* (as spelled out in the previous sections) is to be put in abeyance "until three (3) years after the effective date" (or January 3, 1959) of the Statehood Act "unless the President, by executive order, shall sooner proclaim that the United States District Court for

the District of Alaska established in accordance with the provisions of this act, is prepared to assume the functions imposed upon it." In other words, Section 18 permitted the District Court for Alaska to stay in existence for a period not to exceed three years. There is no ambiguity and Congress was explicit that it was only the continued use of the federal *District Court* in Alaska that was to be allowed subsequent to January 3, 1959, the date Statehood was formally granted Alaska. No such extension of time was authorized insofar as the United States Court of Appeals was concerned. The repeated reference to the "District Court for the Territory of Alaska" within Section 18 makes it obvious Congress was intentionally sanctioning the continuing use of its territorial court, an Article I Court under the Constitution of the United States, i.e. the "District Court for the Territory of Alaska", but not the United States Court of Appeals for the Ninth Circuit, an Article III Court.

The courts with which we are involved herein are creatures of the federal government and as such, the federal government can impose such conditions and limitations as it decides. The *Parker v. McCarrey* decision (Pet. Br., Appendix C) cited by the Appellate Court in denying petitioner's contention it had jurisdiction in the cause is a proper—and the only—interpretation of Section 18 of the Statehood Act and its finding of no jurisdiction should be sustained.

## II.

### THE CREATION OF THE SUPREME COURT FOR THE STATE OF ALASKA FURTHER FORECLOSES THE QUESTION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT HAVING ANY JURISDICTION IN THIS CAUSE.

As noted earlier, petitioner has also carried its appeal to the Supreme Court of the State of Alaska. (See Appendix A.) It is submitted that the establishment of the Supreme Court of the State of Alaska lends further argument against the United States Court of Appeals for the Ninth Circuit having any jurisdiction in the present proceedings.

The Alaska Constitution provides in its Article IV for a permanent system of state courts. Article XV of the Constitution, entitled "Schedule of Transitional Measures", continues in force the territorial laws as state laws (Section 1), and saves all existing rights and liabilities and "all civil, criminal, or administrative proceedings," as to which "*the State shall be the legal successor to the Territory in these matters*" (Section 2). (Emphasis added.) Again, Section 17 of Article XV provides:

> Until the courts provided for in Article IV are organized, the courts, their jurisdiction, and the judicial system shall remain as constituted on the date of admission unless otherwise provided by law. *When the State courts are organized,* new actions shall be commenced and filed therein, and *all causes, other than those under the jurisdiction of the United States, pending in the courts existing on the date of admission, shall be transferred to the proper state court as though commenced, filed, or lodged in those courts in the first*

*instance,* except as otherwise provided by law. (Emphasis added.)

In view of the fact that the appellate jurisdiction of the Ninth Circuit, over post-statehood judgments of the interim courts was in doubt, the first Alaska legislature, in March 1959, amended subsection (4), Section 32, ch. 50, SLA 1959, to read as follows:

> (4) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, in the event that either: a court of competent jurisdiction, by final judgment, declares that the District Court of the State of Alaska lacks jurisdiction to determine causes arising under the laws of the State, notwithstanding the provisions of Public Law 508, 85th Congress; or the President of the United States, by executive order, terminates the jurisdiction of the District Court of the State of Alaska; the Judicial Council shall forthwith meet and submit to the Governor the names of the persons nominated as justices or judges of all of the supreme and one or more or all superior courts of the State and in any event shall submit all of said names prior to January 3, 1962. *In the event that a court of competent jurisdiction by final judgment, declares that the United States Court of Appeals for the Ninth Circuit lacks jurisdiction to hear appeals from the District Court of the State of Alaska, the Judicial Council shall forthwith meet and submit to the Governor the names of the persons nominated as justices of the supreme court.* If, upon the occurrence of any of the events set forth in this subsection, the members of the first Judicial Council have not been

appointed, the Governor shall forthwith fill the initial vacancies of the non-law members.

Accordingly, following the Ninth Circuit's decision in *Parker v. McCarrey* on June 16, 1959, that it has no appellate jurisdiction over the decisions and judgments of the interim courts rendered after January 3, 1959, the Judicial Council established under Section 16, Article XV of the Alaska Constitution, met on July 15, 1959, to consider nominations for the Supreme Court of Alaska. The Governor appointed the Justices of that court on July 29, 1959.

The Supreme Court of Alaska is now the highest court of the State and the court of last resort on matters of state law (including, of course, former territorial law). Since the *Mary Bridges* case involves only such a matter, it is apparent that this is the court to which she should and has addressed her application for relief. Regardless, therefore, of the controlling effect *vel non* of the *Parker* decision, in view of this new development in the establishment of the Alaska judiciary, the United States Court of Appeals for the Ninth Circuit was—and is—no more the appropriate appellate forum for the relief sought than if the case had originated in a *nisi prius* court of the State of (e.g.) California.

This conclusion is also entirely in accord with the Alaska Statehood Act. If the argument is accepted that Congress, in Section 1 of the Act, "accepted, ratified, and confirmed" the Alaska Constitution then it consented to the disposition of causes involving mat-

ters of State law in accordance with the scheme set forth in Section 17, Article XV of the Constitution (supra). Accordingly, Section 17 of the Statehood Act provides:

> All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State not transferred to the United States District Court for the District of Alaska shall be proceeded with and determined by the courts created by said State with the right to prosecute appeals or writs of certiorari from the final determination in said causes made by the court of last resort created by such State to the Supreme Court of the United States, as now provided by law for appeals and writs of certiorari from the court of last resort of a State to the Supreme Court of the United States.

While Section 18 of the Act suspends the operation of Sections 13 through 17 "with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts" for a prescribed period, it obviously was not intended to suspend the State's sovereign power to establish, pursuant to its Constitution, an appellate court when the State should deem it necessary to do so.

## CONCLUSION.

For the reason set forth above, it is respectfully requested that the petition for the writ of certiorari be denied.

Dated, Fairbanks, Alaska,
January 14, 1960.

Respectfully submitted,
JOHN R. CONNOLLY,
*Attorney for Intervenor.*

CLIFFORD J. GROH,
HENRY J. CAMAROT,
*Of Counsel.*

**(Appendix "A" Follows.)**

## Appendix "A"

## OPINION

[December 22, 1959.]

Petition for Review From the District Court for the District of Alaska, Fourth Judicial Division.

Before: Nesbett, Chief Justice, and Hodge and Dimond, Associate Justices.

Dimond, Associate Justice.

The question for decision is whether the Alaska Housing Authority, in the exercise of its power of eminent domain, may use a declaration of taking.

On June 9, 1958, the Authority filed a complaint for the purpose of condemning certain real property of petitioner in connection with a slum clearance and urban redevelopment program within the boundaries of what is designated as "Urban Renewal Project T. A. R-7", in the City of Fairbanks, Alaska. On the same day it also filed an instrument entitled "Declaration of Taking", asserting that the right to take petitioner's property in this manner had been conferred on the Authority by Section 57-7-1 ACLA 1949, Section 8 of Chapter 105 SLA 1951 [Section 40-7A-9 ACLA 1949 Cum. Supp.], Chapter 90 SLA 1953[1], and Chapter 122 SLA 1955 [Sections 16-1-103, 16-1-104 Cum. Supp.].

[1]No reference is made in the declaration of taking to Ch. 138 SLA 1955 which amended Ch. 90 SLA 1953. These acts, as further amended by Ch. 146 SLA 1959, now appear in the Alaska Compiled Laws Cumulative Supplement as Sections 57-7-24 to 57-7-29.

Petitioner moved to dismiss the complaint and the action, to strike the summons and quash the service of summons, and to strike the declaration of taking. In a memorandum opinion filed on August 23, 1958, Judge J. L. McCarrey, Jr. erroneously held that the question as to the declaration of taking had been raised on the motion to dismiss, rather than on the motion to strike; and considering that point only, said:

> "The Court feels that the meaning of the statute[2] is clear though perhaps not well articulated, and that the Alaska Housing Authority may use Sections 57-7-24 through 57-7-29 ACLA 1949 Supp. to conduct condemnation proceedings.
>
> "The Territorial Legislature has made a valid attempt to provide for future contingencies in the ever changing field of urban renewal and eminent domain. Where the legislative intent is clear, it should be followed.
>
> "Therefore, the motion to dismiss is denied."

Petitioner was ordered to give possession of her property to the Authority not later than October 2, 1958. On March 30, 1959, a writ of assistance was issued in aid of such order granting possession. Petitioner moved to quash the writ, but this was denied on May 1, 1959—the district court stating:

> ". . . it is the opinion of this Court that the Order aforesaid involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal

[2] Sec. 40-7A-9 Cum. Supp.

from the Order may materially advance the ultimate termination of the litigation."

Petitioner asks us to review the lower court's determinations under Rules 23-33 of the Rules of this Court. Respondents have not filed a memorandum in opposition "disclosing any matter or ground why the relief sought by the petition should not be granted."[3]

We grant the petition. The decision that the Authority may avail itself of a declaration of taking in eminent domain is of such importance as to justify deviation from the normal appellate procedure by way of appeal from a final judgment and to require the *prompt* attention of this court.

The concept of a declaration of taking in connection with eminent domain was first brought into existence in Alaska in 1953 when the Territorial legislature provided that—

> "In any proceeding instituted by and in the name of the Territory of Alaska involving the acquisition of any real property or any interests therein or any easement for public highway purposes the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the Territorial authority empowered by law to acquire the real property or any interests therein or any easement described in the petition, declaring that said real property or any interests therein or any easement is

[3] Rule 29(a), Rules of the Supreme Court.

thereby taken for the use of the Territory of Alaska:"[4]

The statute prescribed what must be contained in the declaration, and then stated that when it was filed and the amount of estimated compensation deposited with the court—

> "... title to the real property in fee simple absolute ... shall vest in the Territory of Alaska, and ... shall be deemed to be condemned and taken for the use of the Territory of Alaska, and the right to just compensation for the same shall vest in the persons entitled thereo."[5]

The court was to then fix the time within which and the terms upon which possession of the property must be surrendered to the condemning authority, which could not be before the expiration of the time allowed a defendant to move to strike the declaration and dismiss the suit if he wished to raise any question with respect to the validity of the taking.[6] Failure to file such a motion constituted a waiver of the right to challenge the validity of the taking.

In 1955 this authority was extended so that the Territory could utilize a declaration of taking, not only for highway purposes, but "for any purpose for which the Territory is authorized the power of eminent domain."[7] In addition, at the same legislative session,

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[4]Ch. 90 SLA 1953, Sec. 1.
[5]ibid.—Secs. 2 and 3.
[6]ibid.—Secs. 4, 6.
[7]Ch. 138 SLA 1955.

cities of the first class were permitted to use a declaration of taking—

> "In the exercise of eminent domain for street or highway, school, sewer, water, telephone, electric, other utility, and slum clearance purposes and use granted to cities of the first class . . ."[8]

The history of this statute shows that the legislature refused to extend such authority to other than first class cities, and in addition, limited the power to the purposes specified rather than to any purpose for which such cities were authorized the use of eminent domain.[9]

Nothing further was done until four years later when, in 1959, the first State legislature permitted the use of a declaration of taking by any public utility district or school district.[10] But at the same legislative session, the House of Representatives indefinitely postponed a bill which would have extended this power to—

> ". . . any person, firm, municipal corporation, association or corporation authorized to transact business in the state for the purpose of constructing, maintaining, or operating electric light and power plants, water plants, sewer systems, telephone or other public utilities . . ."[11]

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[8]Ch. 122 SLA 1955.

[9]Journal of the House—Alaska Legislature—1955.

[10]Ch. 146 SLA 1959.

[11]Committee Substitute for House Bill 126—House Journal, p. 949.

When the Alaska Housing Authority was created in 1945, for the purpose of undertaking slum clearance and providing low cost housing projects, there was conferred upon it the power—

> ". . . to acquire by eminent domain under Sections 57-7-1 to 57-7-23 Compiled Laws of Alaska 1949, or otherwise, real and personal property . . ."[12]

In 1949 the scope of the Authority's powers was enlarged so as to encompass the construction of what were termed "moderate cost and rental dwelling units." The power of eminent domain was again referred to—Section 12 of this act permitting the Authority—

> ". . . to acquire by . . . condemnation, or otherwise . . . such lands . . . as may be necessary or desirable for the establishment, construction and operation of such housing. * * *"[13]

The Slum Clearance and Redevelopment Law was enacted in 1951.[14] Its purpose was to provide for the clearance of slum and blighted areas and to develop them for more beneficial uses. Section 5 of the act, entitled "Powers of Authority", provides in subdivision (c) that the Alaska Housing Authority shall have the power—

> "Within its area of operation, to . . . acquire by . . . eminent domain or otherwise, any real or per-

[12]Sec. 40-7-6 ACLA 1949.
[13]Ch. 13 SLA 1949.
[14]Ch. 105 SLA 1951.

sonal property or any interest therein, together with any improvements thereon, necessary, or incidental to a redevelopment project . . ."

Section 8, entitled "Eminent Domain", says this:

"The Authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary within the boundaries of a redevelopment project or for its purposes under this Act after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. The Authority may exercise the power of eminent domain in the manner provided in Sections 57-7-1 to 57-7-23 of the Compiled Laws of Alaska, 1949, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to the municipality or the Territory may be acquired without its consent."

The right to use a declaration of taking has not been specially granted to the Alaska Housing Authority, as it has been to the Territory (now State) of Alaska, to first class cities, and to school and public utility districts. The right did not exist at all in 1951 when for the last time the legislature spoke of the exercise of eminent domain by the Authority.[15] And

[15]Ch. 105 SLA 1951.

respondent is not the Territory or State of Alaska. It is a public corporate authority, and no more the "Territory" or "State" than is a city or school or public utility district. This is clear from the congressional enabling legislation and from the acts of the Territorial legislature creating the Authority and giving it the powers that it has.[16]

If the power exists at all, it would be by implication, and then only from a liberal reading of the language of Section 8 of Chapter 105 SLA 1951, where the legislature, after having granted the power of eminent domain to the Authority, said that it might exercise such power—

> "... in the manner provided in Sections 57-7-1 to 57-7-23, of the Compiled Laws of Alaska, 1949, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain."

But this is not enough. The incorporation by reference of amendatory and supplementary acts and other statutory provisions which might be enacted later may not be construed as conferring on the Authority any additional or different power of eminent domain. The use of the words "manner provided" must be held to refer to matters of procedure in the exercise of a power otherwise expressly given.

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[16] 48 USCA Secs. 480 et seq.; Secs. 40-7-2, 40-7-6 ACLA 1949; Ch. 105, Sec. 3, SLA 1951, [Sec. 40-7A-4 ACLA 1949 Cum. Supp.].

It apparently was not intended that the declaration of taking power should merely supplement the procedural aspects of the then existing statutory provisions on eminent domain. If it had been, then it would have been enough to simply amend one or more of Sections 57-7-1 to 57-7-23 and say that those who have the power of eminent domain may exercise it by way of a declaration of taking.

But the legislature chose not to do this. The history of the statutes on this subject show that the legislature was particular in selecting those upon whom the power would be conferred and particular also in confining this authority within definite limits.

The declaration of taking is a power of eminent domain, and not only a manner of exercising a power otherwise conferred. More than procedure is involved; substantive rights are affected.

Under Sections 57-7-1 to 57-7-23 the condemning authority is not able to take possession of a defendant's property until ". . . after the report and assessment of damages by the commissioners has been made and filed in the court . . ."[17] And before that event could take place, there had to be a complaint filed, a summons and order to show cause issued, and apparently, a determination by the court that the use for which the property was sought to be appropriated was a public use, or that the public interests required the taking of the lands sought to be condemned.[18]

[17] See. 57-7-21 ACLA 1949.

[18] Sees. 57-7-9, 57-7-10, 57-7-12 ACLA 1949.

In addition, Section 57-7-6 appears to require the court, prior to the time that the property may be taken from a defendant, to make specific findings (1) that the use to which the property is to be applied is a use authorized by law, and (2) that the taking of the property is necessary to such use. The Court of Appeals for the Ninth Circuit has construed this section of the statute as requiring the court to find those facts "before condemnation", and has held that—

> "It is upon findings so made that there is established a basis for further proceedings. The findings constitute the decision of the court upon the vital question of whether or not the property sought to be condemned can be condemned at all."[19]

Finally, the third paragraph of Section 57-7-27 Cum. Supp. states that the right to take possession and title in advance of final judgment—

> ". . . shall be *in addition to any right, power or authority* conferred by the condemning agency under which such proceedings may be conducted, and shall not be construed as abrogating, limiting, or modifying any such right, power or authority." (Emphasis added.)

And when the right to use a declaration of taking was extended to first class cities, it was provided that a city could proceed in the same manner "and with the

[19] *Van Dyke v. Midnight Sun Mining & Ditch Co.*, 177 F. 8[illegible] 3 Alaska Fed. 458 (CA-9, 1910).

same power" as provided for the use of a declaration of taking by the Territory of Alaska.[20]

A declaration of taking enlarges the rights of the condemning authority and reduces those of the landowner. Upon the filing of the declaration and a deposit of the amount of compensation estimated to be due, title to the real property vests in the condemning agency and "such real property . . . shall be deemed to be condemned and taken for the use of the condemning agency . . ."[21] And then, without the necessity of awaiting the report of the commissioners and assessment of damages, the court is given the power "to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession" to the condemning authority.

We conclude, therefore, that the Alaska Housing Authority may not use a declaration of taking. We say this—not only with acknowledgment of the rule that a grant of power of eminent domain is to be strictly construed against the condemning party and in favor of the property owner[22]—but because a logical interpretation of all of the statutes on this subject and their legislative history requires this result.

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[20] Ch. 122, Sec. 2, SLA 1955 (Sec. 16-1-104 Cum. Supp.).

[21] Sec. 57-7-26 Cum. Supp., as amended by Ch. 146 SLA 1959.

[22] *Sutherland Statutory Construction*, 3rd Ed., Vol. 3, Sec. 6504, pp. 249 et seq. Cf. *Botts v. Southeastern Pipeline Co.*, 10 SE 2d 375 (Supreme Court of Georgia 1940); *Northern Mining & Trading Co. v. Alaska-Gold Recovery Co.*, 20 F. 2d 5, 5 Alaska Fed. 351, 357 (CA-9, 1927).

The petition is granted and the following orders in Civil Action No. 10,017[23] are reversed:

(1) The order denying petitioner's motion to dismiss, contained in the memorandum opinion of Judge J. L. McCarrey, Jr., filed on August 23, 1958.

(2) The "Order Granting Possession to Plaintiff", filed September 12, 1958, so far as it relates to petitioner, Mary Bridges.

(3) Paragraph "(1)" of the "Final Order Denying Defendant Mary Bridges' Motion to Quash Writ of Assistance", filed May 1, 1959.

In a separate action[24] petitioner has sought an injunction and damages against the respondents. On November 12, 1959, the district court entered an order staying and abating all proceedings in that case until final determination in the condemnation action (No. 10,017) or until such time as may be otherwise ordered by a successor court or an appellate court having jurisdiction over the proceedings. Petitioner asks us to review that order also and to reverse it. In view of the conclusions reached here, the petition is denied.

The cases are remanded to the district court for proceedings in conformity with this opinion.

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[23] *Alaska Housing Authority, Plaintiff v. Certain Parcels of Land in Fairbanks Townsite, Alaska, etc.—and Mary Bridges, Defendants.*

[24] *Mary Bridges, Plaintiff v. Alaska Housing Authority, a public corporation, and Elmer Gagnon, and M. G. Gebhart, Defendants,* Civil Action No. 10,726